EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

IN THE SUPREME COURT OF THE UNITED STATES

ROLAND A. JONES,

Petitioner,

v.

STATE OF GEORGIA, DEPARTMENT OF HUMAN RESOURCES et al.,

Respondents.

Case No. 85-1855

(3)

Supreme Court, U.S.
FILED
JUN 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

OBJECTION TO RESPONDENT'S MOTION TO STRIKE FRIVOLOUS PETITION

Respondent's Motion to strike my petition for writ of certiorari as a frivolous Petition under U. S. Supreme Court Rules 39 and 42(c) is improper for these proceedings. My action was filed pursuant to this Court's directive. (See attached letter and Appendix "H", Record of Appendices). To strike or dismiss now based on respondent's claims would be a gross injustice and grossly unfair.

Striking or dismissing as respondents are requesting would also be in direct violation of the principle of U. S. Supreme Court Rule 22.3:

> "No motion by a respondent to dismiss a petition for writ of certiorari will be received."

By no stretch of the imagination can respondent's motion be authorized under the provisions of the U. S. Supreme Court Rules 39 and 42(c) as respondents have asserted. Rules 39 and 42(c) pertain only to questions of administrative design and format. The asserted rules grant to respondents no procedural or legal basis for submitting a motion to strike or dismiss.

U. S. Supreme Court Rule 22.1 also provides that the respondents shall file within 30 days after receipt of a petition (See my cross-motion for default filed herewith).

Striking or dismissing my petition would also be in direct violation of the principles and intent of Haines v. Kerner, 404 U. S. 519 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed. 2d 652, 1972. A pro se complaint from a citizen who is not a lawyer under F. R. Civ. P. 60(b) should not be considered as frivolous when it has invoked the standards that this Court has established in Haines:

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"The reasons for the Haines test are manifest. A pro se complaint provides an unsatisfactory foundation for deciding the merits of important questions because typically it is inartfully drawn, unclear, and equivocal, because thorough pleadings, affidavits, and possibly an evidentiary hearing will bring out facts which simplify or make unnecessary the decision of questions presented by the naked complaint...Haines teaches that the decision on the merits of the complaint should normally be postponed until the facts have been ascertained. The same approach was taken in Polk Co v. Glover, 305 U. S. 5, in which the Court reversed the dismissal of a complaint, without intimating any view of the constitutional issues, on [t]he salutary principle that the essential facts should be determined before passing upon grave constitutional questions...Id., at 10. See also Borden's Co. v Baldwin, 293 U. S. 194, 213 (Cardozo and Stone, JJ, concurring in result)...Alternatively, a more concrete record will be available on which to decide the constitutional issues. See generally Rescue Army v. Municipal Court, 332 U. S. 549, 574-575. Even when constitutional principles are not involved, it is important that 'the conceptual legal theories be explored and assayed in the light of actual facts, not as a pleader's supposition,' so that courts may avoid 'elucidating legal responsibilities as to facts which may never be' Shull v. Pilot Life Ins. Co., 313 F. 2d 445, 447 (CA5 1963). (Stevens, dissenting, Estelle v. Gamble, 429 U. S. 1976.

"It has been assumed that the dismissal [pro se] by the trial court must be treated as proper only if the standard of Conley v. Gibson, 355 U. S. 41 (1957), would permit the grant of a motion under Fed. Rule Civ. Proc. 12 (b)(6)." (Rehnquist, dissenting, Cruz v. Beto, 405 U S at 326, 1971).

Respondents claim that any allegations or arguments that I seek to raise should have been raised when I initially reached the appellate level. This is contrary to the intent of the rules and the law, and the rules and the law state:

"An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims" (Hughes v. Rowe, U. S. 449, per curiam, at pg. 15, 1980).

"The Federal Rules reject the approach that pleading is a game of skill in which one misstep...may be decisive to the outcome and accept the principle that the purpose of pleadings is to facilitate a proper decision on the merits. Cf. Maty v. Grasselli Chemical Co., 303 U. S. 197. (Conley v. Gibson 355 U. S. at 48, 1957).

F. R. Civ. P. 60(b): "...the court may relieve

> a party...from final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)...(6) any reason justifying relief from the operation of the judgment"

Respondents must also demonstrate to this Court that my appeal is not entitled protection under Fed. R. Civ. P. 60(b) and under the following pro se standards:

> Dismissal is only permissible when the court can say "with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleading drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief'" Haines v. Kerner, 404 U.S. 519 520-21, 92 S.Ct 594, 595-96, 30 L.ed.2d 652, 1972), quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80, 1957, reaffirmed in Estelle, 429 U.S. at 99, 106, 97 S.Ct. at 292.

For respondents to prevail on such a motion that a pro se appeal is frivolous in a civil rights/Fed. R. Civ. P. 60(b) case and also according to Webster's New Collegiate Dictionary, respondents must demonstrate:

a. That my appeal is lacking in seriousness.

b. That my appeal is of little or no importance.

c. That my appeal is marked by unbecoming levity.

d. That my appeal is irresponsibly self-indulgent.

Respondent's motion to dismiss my appeal as frivolous presents to this Court none of the accepted criteria justifying such a harsh sanction to be issued by this Court. Because of an absence of the above criteria and principles in respondent's motion, the letter attached, and based on the principle of U. S. Supreme Court Rule 22.3 that no motion to dismiss will be received, respondent's motion must be denied.

Respectfully submitted,

Roland A. Jones
Lt. Col. U. S. Army (Ret.)
Pro se, not a lawyer

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

February 5, 1985

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

JUN 18 1985

LUTHER D. THOMAS, Clerk
By: Deputy Clerk

Mr. Roland A. Jones
1390 Heatherland Drive
Atlanta, GA 30331

Re: Roland A. Jones v. Department of Human Resources of Georgia, et al., No. 83-2065

Dear Mr. Jones:

A motion for relief from judgment prepared pursuant to the Federal Rules of Civil Procedure is to be filed in the appropriate United States District Court. Please be advised that the Federal Rules of Civil Procedure apply to proceedings before the United States District Court, not the Supreme Court of the United States.

With respect to your FOIA request, please be advised that the United States Courts are specifically exempt from compliance with the Freedom of Information Act. See 5 U.S.C. 551(1)(b).

Very truly yours,

ALEXANDER L. STEVAS, Clerk

By

Francis J. Lorson
Chief Deputy Clerk

vm

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing motion, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed to the following:

Mr. WAYNE P. YANCEY
132 State Judicial Building
40 Capitol Square, S. W.
Atlanta, Georgia 30334

This 14th day of June, 1986.

Roland A. Jones
Lt. Col. U. S. Army (Ret.)
Pro se, not a lawyer